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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

RUDY, ANDREW J

ART UNIT

PAPER NUMBER

3627

DATE MAILED: 05/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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GROUP 3600

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/004,738
Filing Date: December 04, 2001
Appellant(s): STIEBER ET AL.

Michael J. McGovern
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 29, 2005 appealing from the Office action mailed April 6, 2005 and the March 16, 2006 Order from the USPTO Board of Patent Appeals and Interferences. The previous Examiner's Answer dated December 20, 2005 is vacated.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6554184	Amos	4-2003
4733765	Watanabe	3-1988
6,028,764	Richardson et al.	2-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-9 and 15-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-9 and 15-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amos, US 6,554,184, in view of Watanabe, US 4,733,765, and further in view of Richardson, US 6,028,764.

It is noted claim 21 was inadvertently not included in the grouping of the claims under the 35 USC 103 heading from the April 6, 2005 Final Rejection. However, it is clear Appellant was cognizant that this was an inadvertent error as claim 21 was addressed by Appellant in the Appeal Brief, under the 35 USC 103 section. Thus, the lack of including claim 21 with the other claims does not rise to the level of presenting a new ground of rejection.

(10) Response to Argument

Appellant's page 3 REMARKS with regards to "additional comments about inadvertent, incorrect operations are not understood" are not contained in the April 6, 2005 Final Office Action.

Appellant's ARGUMENT has been reviewed, but is not convincing. In short, the April 6, 2005 Final Office Action provides a proper basis for rejecting the claims under 35 USC 103. Appellant's contention that no new evaluation of the present claims was conducted is noted, but not agreed with. The rejection articulated from the April 6, 2005 Final Office Action fully encompassed the claims, as amended, during the prosecution history. Because the grounds for rejection did not change does not mean the amended claims were not freshly reviewed. Thus, Appellant was referred back to the April 21, 2004 Final Office Action as it contained Appellant's inventive concept.

Appellant's comment that Richardson was not included in the April 21, 2004 Final Office Action is opposite to the record, e.g. pages 3-4 of this 4/21/04 Final Rejection.

The April 6, 2005 Final Office Action is maintained as it is the Examiner's position that the combination of references cited and applied fully encompass the distance recited from the claim language. The localization comment does not provide a line of demarcation over the combination of references.

Appellant's comment that Amos is not wireless communication is opposite to the Amos disclosure, e.g. Fig. 2, the Internet, Telephone or Satellite Communications Networks (N).

Regarding the Advisory Actions, each is not ambiguous with regards to not entering the Amendment After Final. See box 3 (a) from the July 13, 2005 Advisory Action; and box 3 (a) from the September 6, 2005 Advisory Action and the Note associated with each.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-9 and 15-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 3627

Applicant's ARGUMENT has been reviewed, but are not convincing.
Applicant's claim language, as presented for Appeal, are deemed indefinite as articulated from the April 6, 2005 Final Office Action.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Andrew Joseph Rudy
May 3, 2006

Conferee:


Alexander Kalinowski, SPE, Art Unit 3627